BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VENTURA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014020341 ORDER DENYING MOTION FOR STAY PUT

On February 28, 2014, Student filed a motion for stay put. On March 4, 2014, the Ventura Unified School District (District) District filed an opposition.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

Parents are not entitled to choose teachers or other instructional personnel. Although districts may choose to let the child's multidisciplinary team make such decisions, the IDEA permits districts to treat these matters as administrative decisions, which are made by school personnel. (*Letter to Wessels* (OSEP 1990) 16 IDELR 735.) A number of unpublished Ninth Circuit court decisions, while not precedent, provide guidance on this issue and have held that if the assigned personnel are qualified to perform the designated services, the allocation of qualified personnel to provide the services of adult assistance is in the administrative discretion of the agency. (See *Cheryl Blanchard v. Morton School Dist., et al.*

[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

(9th Cir. 2010) 54 IDELR 277; *Gellerman v. Calaveras Unified School Dist.* (9th Cir. 2007) 37 IDELR 125; *Zasslow v. Menlo Park City School Dist.* (9th Cir. 2003) 38 IDELR 187.) If challenged on their decisions regarding the assignment of educational personnel, the district must be prepared to show that its staff is qualified within the meaning of the IDEA, and that the child is receiving a FAPE. (*Slama v. Independent School Dist. No. 2580* (D.Minn. 2003) 39 IDELR 3.)

DISCUSSION

Student seeks an order that Parent's preferred aide be assigned to assist Student at all times, in lieu of the aide assigned by District to assist Student on campus and another aide assigned to assist Student off campus at Student's Workability job site. Student does not contend that the District has failed to assign an adult aide to assist Student throughout his school day, as set forth in Student's last agreed upon an implemented IEP of October 2, 2013 (as amended on December 12, 2013 and consented to by Parent on January 14, 2014). Nor does Student provide any evidence that the aides assigned by the District are not qualified. Parent's declaration simply states that Parent's preferred aide worked with Student for over than ten years, and could maximize Student's vocational experience.

The IDEA does not confer upon Parent the right to choose the personnel who work with Student. Assignment of staff is the prerogative of the school district, and District has pledged by sworn declaration to continue providing the services set forth in Student's operative IEP, including adult assistance throughout the school day and in the Workability program. Because District is implementing the IEP as written, and has discretion to regarding staff assignments, Student's motion for stay put is denied.

IT IS SO ORDERED

DATE: March 05, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings